IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 431 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHODABHAI POPATBHAI VAGHASIA

Versus

DEPUTY COLLECTOR

Appearance:

1. Criminal Revision Application No. 431 of 2000

MR RM CHHAYA for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/02/2002

ORAL JUDGEMENT

1. This is a revision application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 challenging the judgement and order dated 27.6.2000 recorded by the learned Additional Sessions Judge,

Rajkot. It was noticed that the petitioner was grinding groundnut at his mill at village Atkot in Jasdan Taluka of Rajkot district. An inquiry was made and it was found that on 28.11.1997 5250 Kg. of groundnut were lying in the said mill and 465 Kg. of groundnut oil worth Rs.76,650/- was also found there. The said goods were seized and notices were issued to the present petitioner saying that the petitioner did not hold valid license for carrying out the said business of grinding groundnut and extracting oil from the said groundnut and, therefore committed offence under the provisions of Essential Commodities Act, 1955. Notice was replied to by the petitioner and after hearing, the Deputy Collector, Rajkot passed an order dated 5.5.98 confiscating the aforesaid groundnut and groundnut oil in accordance with the provisions made under the Essential Commodities Act, 1955. Feeling aggrieved by the said order of the learned Deputy Collector, Rajkot the petitioner preferred criminal appeal being criminal appeal No.11/98 before the Sessions Court, Rajkot under Section 6A of the said Act of 1955. After hearing, the learned Additional Sessions Judge dismissed the said appeal.

2. Feeling aggrieved by the said judgment and order of the learned Additional Sessions Judge, Rajkot the petitioner has preferred this revision application before this Court. It is being contended that the petitioner was not required to hold license and petitioner was simply working as job worker and a kachha register was maintained by him and, therefore, he had not committed any illegality and, therefore the goods could not have been confiscated. Therefore the orders passed by the learned Deputy Collector and confirmed by the learned Additional Sessions Judge are illegal and deserve to be quashed and set aside. The petitioner has therefore prayed that the present revision application be allowed and the aforesaid two orders be set aside. On receipt of the revision application rule was issued and Mr.B,D.Desai learned A.P.P. appears in response to the service of rule.

3. I have heard the learned counsels for the parties and have perused the papers.

4. Learned advocate for the petitioner has argued at length that the petitioner was not required to obtain license for dealing in the business in question and, therefore, the said aspect has not been properly considered by the two courts below and, therefore their orders are vulnerable.

5. On going through the provisions made in the Gujarat Essential Articles Orders 1981 it becomes clear that the term producer has been defined in sub-section 17 of Section 42 of the said order. It is as follows :-

> "(17) "producer" means a person carrying on the business of milling, expelling, extracting, refining or manufacturing of any essential article-"
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> (i) by buying goods for being processed by himself and selling the finished products to a wholesaler or through a commission agent, or
>
> (ii) by doing any of the processes of milling, expelling, extracting, refining and manufacturing on behalf of another;
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> Explanation-For the purpose of this clause an agriculturist producing the agricultural produce in his own land shall not be construed as a producer;

6. According to the aforesaid definition it is clear that when a person is doing any of the processes of milling, expelling, extracting, refining or manufacturing on behalf of another than also he has to be treated to be producer within the meaning of sub-section 17 of Section 42 of the said orders of 1981. In the present case we find that even according to the defence of the petitioner he was grinding groundnut on behalf of others. Therefore, when the mill belonged to the petitioner, it was his obligation to obtain license in accordance with Section 3 of the said orders of 1981. Sub-section 2 of section 3 of the said orders of 1981 clearly shows that on and after 20.4.1991 no person could carry on business as producer in Essential Commodities Articles except under and in accordance with terms and conditions of license granted in this order. It is not in dispute that groundnut as well as groundnut oil are essential articles within the meaning of the said orders of 1981 and, therefore, in view of the provisions made in sub-section 2 of section 3 of the said orders of 1981, the petitioner being the producer, was required to obtain a valid license. He was required to carry out business in accordance with the license obtained by him under the said provisions of orders of 1981. In the present case we find that the petitioner was actually doing processing business and was producer within the meaning of subsection 17 of section 2 of the said orders of 1981

and, therefore, he was required to hold license under Sub-section 2 of Section 3 of the said orders of 1981. This has not been done and, therefore, there is apparent infringement of the aforesaid mandatory provisions of the aforesaid orders of 1981. When the said infringement is proved on record, the petitioner has no case and the orders in question cannot be challenged. It is very clear that when the business was being run by the petitioner without obtaining the license than the entire goods found in his custody was liable to be confiscated. In the present case, the petitioner was doing the aforesaid business without holding license and, therefore, the goods was confiscated by the officer in question. Therefore, the orders in question cannot be treated to be illegal and when the orders are not found to be illegal it is not open to this Court to exercise revisional jurisdiction to interfere with the said orders of the learned Additional Sessions judge, Rajkot. In that view of the matter, there is no merit in the present revision application and it is therefore required to be dismissed.

For the foregoing reasons this revision application is ordered to be dismissed and the judgment and order of the learned Additional Sessions Judge are confirmed. Rule is discharged.

(D.P. Buch, J.)

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